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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CHIQUITA FRESH, N.A., L.L.C. and  
ANDREW & WILLIAMSON SALES CO., INC.

Plaintiffs

v.

SAMMY'S PRODUCE, INC., YAN SKWARA  
SAMUEL V. NUCCI and DARIN PINES

Defendants

Case No. : 08-CV714 JLS(POR)

**FIRST AMENDED COMPLAINT  
(To Enforce Payment  
From Produce Trust)**

Chiquita Fresh, N.A., L.L.C. ("Chiquita") and Andrew & Williams Sales Co., Inc.  
("A&W") (collectively "Plaintiffs"), for their complaint against defendants alleges:

JURISDICTION AND VENUE

1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural  
Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA") and 28 U.S.C. §1331.

2. Venue in this District is based on 28 U.S.C. §1391 in that (a) plaintiffs'  
claims arose in this District and (b) defendants' principal place of business is in this  
District.

PARTIES

3. a. Plaintiff Chiquita, an Ohio limited liability corporation with its principal place of business in Cincinnati, Ohio, is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce and was at all times pertinent herein, a dealer subject to and licensed under the provisions of the PACA as a dealer.

b. Plaintiff A&W, a California corporation with its principal place of business in San Diego, California, is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce and was at all times pertinent herein, a dealer subject to and licensed under the provisions of the PACA as a dealer.

4. a. Defendant, Sammy's Produce, Inc. ("Sammy's Produce"), a California corporation with its principal place of business in Vista, California, is engaged in the business of buying wholesale quantities of produce in interstate commerce and was at all times pertinent herein, a dealer subject to and licensed under the provisions of the PACA as a dealer.

b. Defendants Yan Skwara, Samuel V. Nucci and Darin Pines are and were the officers and directors of Sammy's Produce, during the period of time in question who controlled the day to day operations of Sammy's Produce and were in positions of control over the PACA trust assets belonging to plaintiffs.

GENERAL ALLEGATIONS

5. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5(c) of the PACA, 7 U.S.C. §499e(c).

6. a. Between February 14, 2008 and March 12, 2008, Chiquita sold and delivered to defendants, in interstate commerce, wholesale amounts of produce worth \$73,545.90, which remains unpaid.



Count 2

(Failure to Pay For Goods Sold)

14. Plaintiffs incorporate each and every allegation set forth in paragraphs 1 to 13 above as if fully set forth herein.

15. Defendants failed and refused to pay plaintiff \$125,878.32 owed to plaintiffs for produce and other items received by defendants from plaintiffs.

WHEREFORE, plaintiffs request judgment in the amount of \$125,878.32 against the defendants, jointly and severally.

Count 3

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Yan Skwara)

16. Plaintiffs incorporate each and every allegation set forth in paragraph 1 to 15 above as if fully set forth herein.

17. Defendant, Yan Skwara, was an officer who operated Sammy's Produce during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiffs.

18. Defendant, Yan Skwara, failed to direct the corporation to fulfill its statutory duties to preserve PACA trust assets and pay plaintiffs for the produce supplied.

19. Defendant, Yan Skwara's failure to direct the corporation to maintain PACA trust assets and pay plaintiffs for the produce they supplied was an unlawful dissipation of trust assets by a corporate official.

20. As a result of said unlawful dissipation of trust assets, plaintiffs have been deprived of their rights as beneficiaries in the produce trust and have been denied payment for the produce they supplied.

WHEREFORE, plaintiffs request judgment against defendant Yan Skwara in the amount of \$125,878.32.

Count 4

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Samuel V. Nucci)

21. Plaintiffs incorporate each and every allegation set forth in paragraph 1 to 20 above as if fully set forth herein.

22. Defendant, Samuel V. Nucci, was an officer who operated Sammy's Produce during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiffs.

23. Defendant, Samuel V. Nucci, failed to direct the corporation to fulfill its statutory duties to preserve PACA trust assets and pay plaintiffs for the produce supplied.

24. Defendant, Samuel V. Nucci's failure to direct the corporation to maintain PACA trust assets and pay plaintiffs for the produce they supplied was an unlawful dissipation of trust assets by a corporate official.

25. As a result of said unlawful dissipation of trust assets, plaintiffs have been deprived of their rights as beneficiaries in the produce trust and have been denied payment for the produce they supplied.

WHEREFORE, plaintiffs request judgment against defendant Samuel V. Nucci in the amount of \$125,878.32.

Count 5

(Unlawful Dissipation of Trust Assets by  
a Corporate Official – Darin Pines)

26. Plaintiffs incorporate each and every allegation set forth in paragraph 1 to 25 above as if fully set forth herein.

27. Defendant, Darin Pines, was an officer who operated Sammy's Produce during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiffs.

28. Defendant, Darin Pines, failed to direct the corporation to fulfill its statutory duties to preserve PACA trust assets and pay plaintiffs for the produce supplied.

